O. Requisitioning 57 Pt. I

1951

File No.

Legal Department.

A BRANCH

Subject:— Opinions under the Bombay Land Requisition Act, 1948

(For subsequent pps. pl. see Pt. II)

P.S.I. E

File No. O. Requisitioning 9/51

Gen. 191 e.

Pt. I 19-A

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Mjr/27/7
5 Cs.

Office of the R.L.A.

Bombay Land Requisition Act. 1948 Section 6(4)(a)

Bombay General Clauses Act, 1904 Section 28.

The very fact that the requisition order and the allotment were returned undelivered, goes to show that they were not served on the landlord. Thus the presumption that these orders were property served by sending by registered post, cannot be made under section 28 of the General Clause Act, 1904. The landlord can callm the benefit of the words "unless the contrary is proved" in that section. Since he did not receive the requisition order within one month from the date of intimation of vacancy, his action in letting out the premises to a person of his choice cannot be challenged (cf. R.L.A's opinion No.12393 dt. 30-8-50).

Sd/- P.R.Lad
O.C. 10/12/50
Remembrancer of Legal Affairs.

U.R. to R.D.(Accom. No. 82) dated the 2nd Jan. 1951.

Rjr/26/7

4 Js.

No. 767
Office of the Remembrancer of Legal Affairs.
Secretariat, Bombay
Dated 12th January 1951.

To

The Collector of Kanara.

Subject:- Requisition of tenement No. 1246 in the Village Road.

Sir,

With reference to your endorsement No. 1. dated 13th October 1950, I have the honour to forward herewith my opinion on the above matter.

Yours faithfully,

Sd/- P.A.Lad

O.C. 9/1

Remembrancer of Legal Affairs.

Jr/46/7

4 Cs.

Office of the R.L.A.

Bombay Land Requisition Act, 1948 Sec.s 6(4)(a) & (5)

Since the landlord does not dispute the declaration made by the Collector under the proviso to section 6(4) of the Bombay Land Requisition Act, 1948 and the letting order, the question of the finality of the declaration is not relevant. What is material is the landlord's failure to report the vacancy within the prescribed period and that would depend on when the vacancy actually occurred. If it had occurred long before 26-1-1950 when the Act was first applied to Karwar and the premises were since then occupied by him as alleged he would not be liable under section 6(5). Since there is no clear evidence on the point, it would not be worthwile to pursue the matter.

Sd/- P.M.Lad
O.C. 9/1
Remembrancer of Legal Affairs.

Mjr/26/7
4 Cs.

Office of the R.L.A.

Bombay Land Requisition Act, 1948.

Bombay Application of to Government Buildings.

Upon the general principle that an Act will not apply to Government property except by express provision or by nece sary implication, and also having regard to its scheme the Land Requisition Act will not be applicable to Government buildings. Such buildings are also not governed by the Bombay Rents Hotel and Lodging House Rates Control Act, 1947, and no necessity for requisitioning should arise.

Sd/- I...ad

O.C. 23/1

Remembrancer of Legal Affairs.

L.R. to A.D. (Accom.) No. 1513 dated, 24th January 195

mjr/26/7

4 Cs.

Office of the R.L.A.

Since the order was considered bad only because it was not addressed to the tenant, there should be no objection to re-requisitioning the premises if it is found that the legal tenant is not residing there. Proper enquiries should however be made in the first instance.

Sd/- P.N.Lal

O.C. 31/1

Remembrancer of Legal Affairs.

L.R. to R.T. (Accommodation), No 1929, dated the 1st February 1951.

Mjr/26/7

& Cs.

Office of the .L.A.

Under section 183(3) of the Indian Companies Act, 1913 an application may be made to the Madras High Court, for condoning the delay. Counsel will have to be engaged for the purpose. The necessary steps should be taken without delay.

Sd/- P...Lad

o.c. 29/1

Remembrancer of Legal Affairs.

U.R. to R.D. (Accommodation), No. 1781, dated the 30th January 1951.

Mjr/26/7

4 Cs.

No. 2899

Legal Department,
Bombay Castle (Bombay No.1), 8th February 1951.

To
The Collector of Ahmedabad,
Ahmedabad.

Subject:- Premises bearing C.S. 695/1
Reid Road, Ahmedabad
Derequisitioning of -------

Sir,

With reference to the correspondence ending with your telegram dated 29th January 1951, I have the honour to forward herewith my opinion in the above matter.

Yours faithfully,

Sd/- J.R.Dharandhar

O.C. 7/2

Additional Secretary to Government

Mjr/26/8

4 Cs.

Legal Department.

In the present case the landlord has no objection to the exchange of premises. In the requisition order of 1949 there is no mention about the particular purposes for which the premises are required. That is to say, they were not requisitioned. for the purpose of accomodating the Sales Tax Office. Under section 7(1) of the Bombay Land Requisition Act, 1948, the State Government may use or deal with the land so continued to be subject to requisition in such manner as may appear to it to be expedient. If it be found expedient to allow the Imperial Bank to occupy the requisitioned ground floor, it would not be unlawful so to do particularly when the landlord has no objection. The exchange is referable to the provision regarding permission contained in section 6(3) of the Act. It is presumed that the landlord and the Imperial Bank had applied for such permission. If they had the permission for exchange could be granted if the necessary delegation has been made.

Sd/- J.R.Dhurandhar

o.c. 7/2

Additional Secretary to Government

No. 23/8

Legal Department
Bombay Castle
Bombay 8th Feb, 1951.

Copy to the R.D. (Accom) for information

Sd/- J.R.Dhurandhar

o.c. 7/2

Additional Secretary to Govt.

Mjr/26/7
4 Cs.

Legal Department.

Bombay Rents Hotel and Lodging House Rates Control Act, 1947

Section 10B (3)

Payment of riot tax by allottees of requisitioned premises.

Section 10B(3) of the Bombay Rents, Hotel and Lodging House Rates Control Act, as amended by the Act of 1950, provides that a tenant shall be liable to pay the amount of the riot tax if he is or was in occupation of the premises in respect of which the riot tax is payable by the landlord on the date on which the riot took place or if the riot continued after that date during the greater part of the period of such riot. Under the Explanation thereto, Government is given the power to fix the date on which the riot took place or the period of the riot. By the notification No. 906/48 issued thereunder, Government has specified the period shown in column 2 of the Schedule annexed as the period in respect of each of the riots specified in column 1 thereof which took place in the City of Bombay. The allottees of premises requisitioned after 31st March 1948, i.e., from 1st April 1948 could not be considered to be on the premises during the riots specified in the Schedule. Consequently these tenants would be exempt from the payment of the riot tax. The allottees of premises requisitioned from December 1947 to 31st March 1948 would not be liable to pay the riot tax in respect of the riots of 1946-47, as the period of that riot was from 1st September 1946 to 31st December 1947 and these tenants could not be deemed to be in possession of the premises for a greater part of the period of riot. But these tenants would be liable to pay the riot tax in respect of the riot of 1948, the period of which was from 1st January 1948 to 31st March 1948, provided those tenants were in occupation for the greater part of the period. For instance, if some of these tenants came to occupy the premises, say, at the end of February or the beginning of March, they would not be liable to pay the riot tax for they would not be considered to have been in occupation for a greater part of the p

part of the period of the riot. The question about the liability of these tenans will have have to ~~determine~~ be determined with reference to the period of their occupation during this riot.

Sd/- J.R.Dhurandhar

o.c. 8/2

Additional Secretary to Government.

U.R. to R.D. (Accommodation), No. 2523, dated the 9th February, 1951.

Mjr/26/7

4 Cs.

L.D.R.I. No. 1827 dt 29-1-51

2. It appears that flat No. 6 in 'Fadar Mansion' was requisitioned by Govt. and was allowed to one Dr. Laxmanan, a Dental Surgeon in the St. George Hospital, Bombay. The allottee having failed to pay Rs. 145/8/0 claimed by the landlord as compensation for damage done to the plot, a question had arisen whether the amount in question should be deducted from the honorarium and license fees due to Dr. Laxmanan and in his opinion No. 9048 date 11th August 1949, H.L.A. had advised that there would be no legal objection to deducting the amount from the honorarium and fees due to Dr. L. and paying the same to the landlord. In his letter dated 13th December 1950, the Surgeon General with the Govt. of Bombay,, states that an amount of Rs. 31-3-0 on account of honorarium for the period from 1-6-49 to 11-6-49 is due to Dr. Laxmanan. He has therefore suggested that the amount in question need not be paid to him but it may be forfeited to Govt. The L.S.G. & P.H.D. accepted the proposal made by the Surgeon General. H.L.A. has however been requested to advise in the matter.

Mjr/26/7

54 Cs.

Legal Department.

Seen and returned.

Sd/- S.D. Nirmandani

O.C.

Additional Secretary to Government.

L.R. to L.S.G. & F.H.L., No. 4183, dated the 14th March-1951.

Mjr/20/7

4 -s.

Legal Department.

Bombay Land Requisition Act, 1948, Section 11.

The view taken by S.D. (Accommodation) is correct. Section 11 of the Bombay Land Requisition Act, 1948, provides for power of Government to take possession of the requisitioned land in the enforcement of which power Government may after giving fifteen days notice to the person from whom possession of the land has been taken under sub-section (1) remove or cause to be removed or dispose of the landlord did not remove his articles stored in a part of the requisitioned premises inspite of notice then that possession of by Government. Consequently, it appears that Government would not be liable to pay compensation to the landlord in respect of the premises which he did not vacate inspite of notice.

Sd/- S.U. Mirchandani

O.C.

Additional Secretary to Government.

U.O. No. S.D. (Accommodation), No. 4496, dated the 19th March 1951.

kjr/26/7

4 Cs.

Legal Department.

Bombay Land Requisition Act, 1948 Section 6(4) (b)

Where an order is made under section 6(4)(b) of the Bombay Land Requisition Act, 1948, a direct nexus is established between the landlord and the tenant and naturally the tenant will be liable to pay rent to the landlord under the ordinary law. Government would not be liable to pay compensation or rent to the landlord even if the tenant fails to pay rent. The parties would be governed by the Bombay Rents Hotel and Lodging House Rates Control Act, 1947 and Government cannot interfere with them in any way. In view of this, it can be inferred that once an order is made under section 6(4)(b) and the landlord complies with the same Government's responsibility is over. If the tenant fails to pay rent in the matter, the landlord has every liberty to proceed against him in a Court of Law and to evict him. Government cannot cancel an order made under section 6(4)(b) once the landlord lets the premises to the person directed by Government. Only if Government's nominee fails to take possession within 1 month of the date of intimation or the premises remain vacant after the period of 1 month, Government can issue a fresh order under section 6(4)(b). (See G.L.A's opinions Nos. 50-Confl. and 3911 dated 30-1-49 and 14-4-49 respectively).

Sd/- B.D. Mi chandani

O.C.

Additional Secretary to Government.

G.R. to R.D. (Accommodation), No. 5418,,dated the 4th April 1951.

Mir/26/7

4 Cs.

Legal Department.

The premises were requisitioned under the Defence of India Rules. It is not known whether the requisition has been continued subject to the provisions of the Bombay Land Requisition Act, 1948, If not, it will be necessary to issue an order under section 7(1) of the Act and then take action under section 8-B both as regards the cupboard as also the recovery of arrears.

2. The Controller of Government Grain Shops may refer the matter to the Controller of Accommodation to take the necessary steps in the matter.

Sd/-
O.C. 9/4

(Solicitor to Government.

U.R. to A.C. of R (GGS), No. 5715, dated the 10th April 1951.

Mjr/26/7
4 Cs.

Office of the Legal Department.

Subject

Proviso to the Explanation to sub-section (2) of section 13 of the Bombay Rents Hotel and Lodging House Rates Control Act, 1947.

The view taken by Labour and Housing Department is correct. The property of the institution is a public charitable trust property and the person in whom the property has vested according to its rules would be trustees even though no formal trust is created.

Sd/- S.L. Kirpalani
28.

Additional Secretary to Government.

U.O. to L. & H. Deptt. No 6706, dated the 28th April 1951.

Mjr/26/7
4 Cs.

Legal Department.

Bombay Land Requisition Act, 1948

Section 6(1) and (4)

Bombay Rents Hotel and Lodging House Rates Control Act, 1947

Under section 6, sub.section (4) read with sub-section (1) of the Bombay Land Requisition Act, 1948, vacant premises can be requisitioned, and the premises tenant or the sub-tenant has ceased to occupy such premises. 'Tenant' has not been defined in this Act but it is defined in section 5, clause (ii) of the Bombay Rents Hotel and Lodging Houses Rates Control Act, 1947. The relevant part of the clause of that section is clause (c), which provides : " 'tenant' means any person by whom or on whose account rent is payable for any premises and includes any member of the tenant's family residing with him at the time of his death as may be decided in default of agreement by the Court." This Act creates statutory tenancies and the benefit of that tenancy is given even to a person who was residing as a member of the deceased tenant's family. In the present case Himatlal occupied the premises in July 1949, that is long after the death of the original tenant and his step-sister. The sons of the latter who are likely to be declared as successors to the property of the original tenant, it is presumed were not residing in the premises as members either of his family or of his step-sister. At any rate they are not now in occupation. Himatlal does not claim to be residing in the premises as a member of the family of the deceased original tenant. Consequently, neither Himatlal nor the sons of the step-sister of the original tenant are tenants within the meaning of section 6, sub-section (1) of the Land Requisition Act. Consequently, the vacancy arose either at the death of the original tenant or at the death of the step-sister even if the latter was residing with the former. In either case the vacancy arose long ago and there appears no legal objection to

requisitioning the promises under section 6, sub-section (4).

Sd/- B.D. Mirchandani,

o.c.

Additional Secretary to Government.

U.R. to R.D. (Accommodation). No. 5621, dated the 9th April 19 1.

Mjr/26/7

4 Cs.

Bombay Land Requisition Act, 1948 Section 6. Bombay Rents Hotel and Lodging House Rates Control Act, 1947.

Whether an occupant is a tenant or a lodger would be a question of fact, which will have to be decided on the facts of each case. In the present case it appears from the contentions raised by Mr. Bernard Bruls that he was occupying as a tenant two rooms and a kitchen in Flat No. 17, Soona Mahal, from May 1947. The receipt passed by the Sidhwa Sisters relate to the payment of rent by Mr. Bernard Bruls for these premises. This fact of payment as rent for the premises would certainly indicate the relationship of landlord and tenant. When Mr. Bernard Bruls applied to the Controller of Accommodation to allow his nominee to occupy the premises as care taker during his absence from India on home leave, the premission was granted but the Sidhwa sisters protested against the permission on the ground that Mr. Bernard Bruls was occupying the premises as a lodger and not as a tenant. Inquiries were made and ultimately Government decided that Mr. Bernard Bruls was occupying the premises as a tenant and the permit was allowed to continue. It was only when Mr. Bernard Bruls intended to apply to the Rent Controller for fixing the standard rent the Sidhwa Sisters began to allege that Mr. Bernard Bruls was not a tenant but a lodger only. This was obviously intended to circumvent the provisions of the rent control Act. Mr. Bernard Bruls did not accept the contention of the Sidhwa Sisters and asserted that he was a tenant and not a lodger. It appears that ultimately Mr. Bernard Bruls did not apply to the Rent Controller and since he has been given accommodation elsewhere, he has vacated the premises. The whole correspondence between Mr. Bernard Bruls and the Sidhwa Sisters coupled with the rent receipts passed by the Sidhwa Sisters appears to indicate that Mr. Bernard Bruls was occupying the premises as a tenant and not as

a lodger. The only circumstance against that contention as pointed out by the Accommodation Office is that it is inconceivable that Mr. Bernard Bruls should have been paying Rs. 325 per month as rent for such sort of accommodation." But Mr. Bernard Bruls was all the while protesting against the exorbitant rent charged to him and he intended to apply to the Rent Controller for fixing the standard rent. This fact in itself would not, therefore, be enough for holding that Mr. Bernard Bruls was a lodger and not a tenant. The evidence as discussed above appears to be in favour of his being a tenant.

Sd/- J.K.Dhurandhar

O.C. 15/2

Additional Secretary to Government.

U.K. to R.D. (Accommodation), No. 2907,
dated the 15th February, 1951.

Mjr/26/7
4 Cs.

Legal Department.

After the Remembrancer of Legal Affairs gave his last opinion No. 290. dated 15th 1951, the Revenue Department (Accommodation) instead of taking any further action in the matter, or collecting more evidence, it appears that they called Mr. Bernard Bruls and had a talk with him. Mr. Bernard Bruls has now written to the Accommodation Controller that he was not a sub.tenant in the flat. This statement of his is quite contradictory to his previous contention that he was not a lodger but a tenant. I t may be that his present statement has been inspired by persons interested in the Sidhwa sisters. Having secured accommodation elsewhere Mr. Bernard Bruls perhaps does not mind now obliging the Sidhwa sisters. He does not seem to have relaised his responsibility for having made a contrary statement earlier. Also his present statement is inconsistent with the contents of the receipts passed to him by the Sidhwa sisters. Unless the Controller of Accommodation has other evidence or good grounds for accepting Mr. Bernard Bruls present story in preference to his earlier story, the Remembrancer of Legal Affairs finds no reason for modifying his earlier view of the matter.

Sd/- B.D. Mirchandani

O.C.

Additional Secretary to Government.

L.R. to R.L. (Accommodation), No. 5620, dated the 9th April 1951.

Mjr/26/7

4 Cs.

Legal Department.

It does not appear from the facts stated in this case that there has been any vacancy. Dr. Miss Margaret Spiegel has stated that she is only a paying guest. The position of a paying guest is that of a licensee and as such She can claim no interest in the premises. Consequently, the premises in possession of Dr. Miss Margaret Spegel would be deemed to be in possession of the landlord. The question of allotting these premises to the first informant does not arise. This case was discussed by the Additional R.L.A. with H.M., (R.D.) along with D.S., (R.D.) and H.M. has orally directed that statement of D.H. Bode should be got verified.

Sd/- B.D. Mirchandani
Additional Secretary to Government.

U.R. to R.D. (Accommodation). No. 7078, dated the 4th May 1951.

Mjr/26/7
4 Cs.

OFFICE OF THE R.L.A.

The question whether a servant occupying his master's premises is a tenant or not will depend on whether the occupationis subservient and necessary to the services performed. (See R.L.A's Opinion No. 5690 dated 18th June '48).

2. It is not known whether the proposed allottees will be required to occupy the flats as a part of the contract of service or for the mere convenient performance of their duties. If not the occupation will be treated as a sub-tenancy which is prohibited by Sec. 15 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, which applies to premises taken on lease by Government.

3. With a view to avoid any complications continuing the premises under requisition seems to be the better course.

4. Under the Bombay Land Requisition Act, 1948 there is no provisio n for giving an assurance to keep the premises under requisition for a particular period; Such a assurance will, therefore, be unauthorized and illegal.

Sd/- J.R.Dhurandhar

O.K. 24/5

Remembrancer of Legal Affairs.

U.R. to R.D. (Accommodation) No. 8238, dated the 25th May 1951.

Mjr/26/7

4 Cs.

Office of the R.L.A.

Bombay Land Requisitioning Act, 1948

Section 6(4)(a) and 11.

There appears no legal objection to Government requisitioning the premises under section 6, sub-section (4) caluse (a) of the Bombay Land Requisition Act, 1948, as these premises have been vacated by the tenant Mr. H.P. Cuming without any intention of returning to India. Government may make a declaration under the proviso to section 6, sub-section (4) that the premises had become vacant, and that declaration would be conclusive evidence that the premises had so become vacant. Shri Diwan Chamanlal has been unauthorisedly occupying the premises after they were vacated by Mr. H.P. Cuming. Shri Diwan Chamanlal can, therefore, be evicted under section 11.

Sd/- B.D. Mirchandani

oc.

for Remembrancer of Legal Affairs.

U.H. to R.L. (Accommodation)No. 7653, dated the 18th May 1951.

Mjr/26/7

4 Cs.

No. 6981
Legal Department,
Bombay Castle (Bombay No. 1), 2nd May 1951.

To,

The City Deputy Collector,

Ahmedabad .

Subject:- Transfer of S. Nos. 379 and 38Ø of the village Dhani Limda to the Calico Mills instead of S. Nos. 208 and 252 of the village Behrampur.

.....

Sir,

With reference to your letter No. R.E.O. 1633 dated the 1st December 1950, I have the honour to forward herewith my opinion in the above matter. Papers of the case accompany.

Yours faithfully,

Sd/- B.D. Mirchandani

o.c.

Additional Secretary to Government.

Mjr/26/7

4 Cs.

Legal Department.

Bombay Land Requisition Act, 1948

Exchange of Requisitioned premises.

In view of the Bombay Land Requisition (Second Amendment) Act, 1950 amending provisions of the Bombay Land Requisition Act, 1948, the question whether premises requisitioned can be exchanged for other premises has assumed importance. In a recent case the Bombay High Court has held that premises requisitioned for a certain public purpose have to be used for that purpose only..Survey Nos. 379 and 380 are requisitioned under the Bombay Land Requisition Act. Evidently such requisition must be either for a State purpose or for a public purpose. The allotment of these survey numbers to Calico Mills for building their servants quarters in exchange for their Survey Nos. 208 and 252 under requisition would not be lawful

Sd/- B.D. Mirchandani

oc.

Additional Secretary to Government.

Mjr/26/7

4 Cs.

Office of the R.L.A.

Bombay Land Requisition Act, 1948.
Requisition of private property of Rulers of merged States.

Certain lands in the Ghorpadi Peth in the City of Poona were recognised to be the private property of the Rajasheb of Mudhol. One of the said lands has been requisitioned by the Collector of Poona under the Bombay Land Requisition Act, 1948. The question for consideration is whether the property which is recognised to be the private property of an Indian ruler under the terms of the merger agreement can legally be requisitioned under the provisions of the Bombay Land Requisition Act, 1948.

Article 3 of the merger agreement entered into with the Raja of Mudhol no doubt provides that the Raja shall be entitled to the full ownership, use and enjoyment of all private properties (as distinct from the State property) belonging to him on the date of the agreement. It is no doubt true that a requisition order would interfere with the use and enjoyment by the Rajasaheb of the land requisitioned But the merger agreement is a political agreement and cannot have legal validity of a higher character than a treaty. It is true that in some constitutions such as that of the United States of America, by Article VI of that Constitution International treaties have been declared to be the supreme law of the land and cannot therefore be abrogated or overidden by the Legislature of a State (Asakura v. Seattle 265 U.S.323). The Constitution of India does not contain any such provision. Article 362 of the Constitution provides that due regard shall be had to the guarantee or assurance given under a covenant or agreement with respect to the personal rights or privileges and dignities of the ruler of an Indian State. This provision does not amount to guarantee of an absolute or inviolate nature. It only provides that due regard shall be had to any

guarantee or promise in the convenant or agreement. As pointed out by the Supreme Court in Gopalan's case in construing the phrase "due process of law", "due" means what is just and proper according to the circumstances of a particular case. The word introduces a variable element. Regard to be given to the guarantee or promise in an agreement or covenant with an Indian ruler must very with the circumstances of each case. The Bombay Land Requisition Act empowers the State Government to exercise its powers in public interest. In other words, it is an eanctment which relates to the exercise of the power which is known as the power of "eminent domain". The power of " eminent domain" cannot be contracted away or surrendered (Pennsylvania Hospitals v. Philadelphia, 246 U.S. 20; Galveston Wharf Co. v. Galveston 260 U.S. 673). There is nothing in Article 362 of the Constitution or any other article to suggest that the power of requisitioning or acquiring for a public purpose the private property of an Indian ruler in accordance with the provisions of an enactment of the State Legislature has been given up or surrendered. Moreover article 362 applies to enactments passed by the State Legislature after the Constitution came into force and will not apply to the Bombay Land Requisition Act which was passed before the Constitution. The Memorandum of the personal privileges of the rulers prepared by the Union Government, which must be read with merger agreements, does not contain any exemption from compulsory requisition or acquisition in public interest. On the other hand para. 33 of the said Memorandum states even the residential property of such ruler can be requisitioned or acquired with the consent of and on payment of reasonable compensation to the ruler. This paragraph indicates that no consent of the ruler is required in the requisition or acquisition of his other property. No question of compensation arises , as the Bombay Land

Requisition Act, 1946, provides for the payment of such compensation. It , theretore, appears th.t the lands in t the Ghorpadi Peth in the city of Poona belonging to the Rajashaeb of Mudhol are not exempt from the provisions of the Bombay Land Requisition Act, 1948. (In fact it is understood that the Government of India have used the provisions of the Land Acquisition Act for compulsorily acquiring land which is recognised as the private property of an Indian ruler for the purposes of the Construction of a railway. Lands belonging to the ruler of Radhapur are being acquired for the Kandla Deesa Railway). As, however, the Rajasaheb of Mudhol can take up this question to the Supreme Court under article 363 of the Constitution, it would be desirable to report this matter to the Government of India before a final reply is given to the Rajasaheb.

Sd/- P.K.Lad

o.c. 29/2

Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. 63, dated 2nd Jan. 1951.

Mjr/26/7

4 Cs.

Legal Department.

Bombay Land Requisition Act, 1948 Section 8B.
Civil Procedure Code, 1908 Section 151.

In view of section 8B (1) or (2) such amount of compensation will be recoverable from him as an arrear of land revenue. However, there is no objection to ask the court to make an order for deposit of such amount during the pendency of the litigation and court can make the order under section 151 Civil Procedure Code.

Sd/- B.D. Mirchandani

O.C.

Additional Secretary to Government.

U.R. to R.D. (Accommodation), No. 7641, dated the 15th May 1951.

Mjr/26/7
4 Cs.

Office of the R.L.A.

Bombay Land Requisition Act, 1948.

R.L.A's opinion No. 444, dated 2-9-48

The legal poistion remains the same as it was when the Remembrancer of Legal Affairs gave his opinion No. 8444, dated 2-9-1948. As advised by the R.L.A. in the aforesaid opinion, the requisitioning of the falt would not be advisable.

Sd/- J.R.Dhurandhar

O.C. 3/6

Remembrancer of Legal Affairs.

U.O. to R.D. (Accom) No. 8719, dated the 4th June 1951.

Mjr/26/7

4 Cs.

Office of the R.L.A.

Bombay Land Requisition Act, 1948.

Sec. 6(1)&(4)

In his opinion No. 329, dated the 11th January 1949 the R.L.A. opined; "The 8 old tenants who were paying rent during the period of reconstruction of the building were entitled to reinstatement immediately the building was ready for occupation, and their premises could not, strictly speaking, be vacant within the meaning of section 6 sub-section (1) of the Bombay Land Requisition Act, 1948, and no notice was necessary." This opinion of the R.L.A. will apply to the present case and Mrs. S.S. Master, who was paying rent during the period of reconstruction, would be entitled to reinstatement in Shop No. 6 in the Sanitary house. That shop on its reconstruction could not be considered as vacant and its requisition under the Bombay Land Requisition Act, 1948, would not, therefore, be lawful. Further the allotment of that shop to Shri Gandhi is open to a further objection that the requisition thereof was not for a public purpose within the meaning of section 6 sub-section (4). Consequently, the allotment of that shop to Shri Gandhi should be cancelled and the shop should be derequisitioned and restored to the landlord from whose possession it was requisitioned. After derequisition, it would be for the landlord and his tenant Mrs. Master to fight out the pending litigation, and if ultimately Mrs. Master fails in the litigation, the landlord will have to report the vacancy to Government whereupon it would be open to Government to exercise its powers under section 6, sub-section (4).

Shop No. 5 in Baxobhoy Mansion became vacant and with the permission of Government the landlord has occupied it. His possession cannot, therefore be distrubed.

Sd/- J.R.Dhurandhar
Remembrancer of Legal Affairs.

G.R. to R.D. No. 8392, dated the 28th May 1951.

Mjr/26/7
4 Cs.

Legal Department.

What is required to put a case out of the purview of section 5(1) of the Bombay Land Requisition Act, 1948 is continuous residence for 6 months. Hence if the landlord or the tenant has not been in continuous occupation for a period of 6 months, the premises would be liable to requisition under section 5(1). Revenue Department (Accomodation) may send a copy of the Advocate General's opinion No. 37 of 1948 to the Collector of Poona for guidance.

Sd/- B.D. Mirchandani

O.C.

Additional Secretary to Government.

U.R. to R.D. (Accommodation), No. 9689, dated the 20th June 1951.

Mjr/26/7

4 Cs.

OFFICE OF THE R.L.A..

In his last opinion at page 241 ante the R.L.A. advised that it would be desirable to postpone the consideration of the question of taking action under section 9-A of the Bombay Land Requisition Act until the threatened suit if filed has been decided. Inquiries made with the Government Soliticots disclose that so far no such suit has been filed by the landlord Mohamadbhai Raojibhai. Section 9-A of the Bombay Land Requisition Act, 1948, is an enabling provision and imposes no restrictions or limitations on the exercise of Government's power to make the allottee tenant of the requisitioned premises. It would, therefore, be competent for Government to issue a direction by an order in writing under that provision that the Italian Consul to whom the requisitioned premises have been alloted shall continue in possession of the premises as tenant and such premises shall be deemed to have been let by the landlord Mahomedbhai Raoji to the Italian Consul or payment of the rent as specified in the order, which rent would be equal to the compensation fixed by Govern ent in respect of these premises. If the landlord is not satisfied with him to apply under the Bombay Rents Hotel and Lodging House Rates Control Act, 1947, for fixing the standard rent.

2. It appears that only a part of the premises which were orginally let to the Honourable Shri Harilal Kania, C.J. of the Supreme Court have been requisitioned by Government and allotted to the Italian Consul. The compensation fixed by Government as payable by the Italian consul for the requisitioned premis s is now paid to Honourable Shri Harilal Kania who is liable to pay the rent of the whole premises to the landlord under the lease. If an order under section 9-A of the Bombay Land Requisition Act is now passed, the rent equal to the compensation shall have to be paid by the Italian Consul directly to the landlord in which case the Honourable Shri Harilal

Kania can claim deduction thereof from the total rent payable by him under the lease. If the landlord is not satisfied with the rent thus payable by the Honourable Shri Harilal Kania, it would be open to him also to apply under the Bombay Rents Hotel and Lodging House Rates Control Act for fixing the standard rent in respect of the premises in occupation of the Honourable Shri Harilal Kania.

Sd/- J.R.Dhuraidhar

O.C. 20/6

Remembrancer of Legal Affairs.

Chief Secretary.

Mjr/26/7

4 Cs.

Legal Department.

Bombay Land Requisition Act, 1948 Section 6(4)(a).

Requisitioning for a public purpose.

In view of the High Court decision in appeal No.31/51 (from Misc.Appln. No.4/52) declaring the requisition order under section 6(4)(a) invalid and bad in law as the purpose for which the requisition was made was not mentioned in the requisition order, Deputy Secretary, R.D. (Accommodation) proposes to change the form of the requisition order. He has also proposed to issue a notification in the Gazette clarifying Government's policy regarding accommodation and making the allotments to non-Government servants and supressed vacancy informants a public purpose. He considers that such notification would support Government's case in the Court if an when the occasion arises. He has also put up a draft order under section 6(4)(a) of the Bombay Land Requisition Act, R.L.A. is requested to advise whether the notification proposed by him and the draft order are in order.

2. Under section 6(4)(a) it is competent for Government to requisition premises for the pruposes of the State or any other public purpose and use or deal with the premises for any such purpose in such manner as amy appear to it expedient. The expressions "for the purpose of the State' of "any other public purpose" have not been defined in the Act. The interpretation of these expressions would be a matter for the Court to decide. The notification proposed by the Deputy Secretary, R.D. (Accommodation) clarifying Government's policy regarding accommodation and making allotments to non-Government servant and supressed vacancy informants, a public purpose, would not be in order inasmuch as the Government cannot by an executive order define the expressions contained in statutes.

3. Under section 6(4)(a) of the Bombay Land Requsition Act, the requisition of premises can be made by Government for the pruposes of the State or any other public purpose. It is clear from this provision that the requisition cannot be made for any purpose other than the purpose of the State.

or any other public purpose. This provision does not postulate any enquiry on the part of the Government to determine whether the premises are required for the purpose of the State or any other public purpose. It would therefore, follow that it is for Government to decide whether the premises are required for purposes of the State or any other public purpose and that decision not being either judicial or quasi judicial would be in the nature of an administrative order and cannot be challenged in a Court of Law by a writ of certiorari. That question arose in the province of Bombay vs. Khushaldas Advani 1950 Supreme Court Journal 455, and the Supreme Court of India held that the decision of the Provincial Government being an administrative act no writ of certiorari could be issued. However Kania C.J. observed that if Government erroneously decides the fact viz. the requisition is for a public propose, it is open to question in a court of law in a regular suit, just as its action, on its decision on the facts mentioned in the proviso to section 3 and in section 4, is open to question in a similar way. It would therefore follow that if Government requisition the premises under section 6(4)(a) it will have to be done only for State purpose or for a public purpose, and if such requisition is not for either of these purposes, the requisition would be considered mala fide, and can be challenged by a regular suit in a Court of Law. Government will have therefore, to consider whether the premises are required for a State purpose or any public purpose before it decides to requisition the premises under this provision.

4. A State purpose obviously is a purpose relating to the administrationof Government and it may not be difficult to decide whether the premises are or not required for a State prupose. The difficulty arises only when the premises are to be requisitioned for a public purpose. In the aforesaid Supreme Court decision Mahajan J. Coserved: "No precise definition of the phrase 'public purpose' can be attempted and none has been given in judicial decisions. It was,

however, observed in Hamabai Premji Patt v. Secretary of State for India (39 Bom. 279) that in order to constitute a 'public purpose' in taking land it is not necessary that the land when taken is to be made available to the public at large, but that it includes a purpose, that is an object in which the general interest of the community as ~~xxx~~ opposed to the particular interest of the individuals is directly and vitally concerned. It was said in that case that prima facie the Government are good judges of the question whether the purpose is one in which the general interest of the community is concerned but that they are not absolute judges, that is, they cannot say 'I desire it, therefore I order it' .... Government cannot by describing a private purpose a public purpose acquire jurisdiction to make an order of requisition". In that case requisition was made for accommodating a refugee by evicting another refugee Bhagwati J. who decided the case expressed the view that the requisitioning of a falt for a particular or individual refugee was not a public purpose, for there was no question of serving the general interest of the community. On appeal Chagla C.J.., disagreed with the above view. In his opinion the housing of refugee might certainly be a public purpose, for securing a house for an individual refugee might itself confer a benefit on the community as a whole. On appeal to the Supreme Court Mr. Justice Das observed: "The learned Chief Justice (Chagla C.J.) was mainfestly right." It is therefore clear that requisitioning of premises for accommodating refugees would be a public purpose. The requisitioning of premises for accommodating Government servants would also be a public purpose for it secures the good of the public by securing the efficiency of those servants of the Government on whose service public good materially depends. (See the University of Bombay v. The Municipal Commissioner of the City of Bombay, I.L.R. 16 Bom 217; Hamabai v Secretary of State 13 Bom. L.R. 1098 and Moosa Hajee Hassan v . Secretary of

State, 39 Bombay 279). The requisitioning of premises for the Consular staff of foreign nations may also be a public purpose as the International Convention requires that such staff has to be accommodated.

5. Similarly requisitioning for housing persons who have no housing accommodation can also be regarded as a public purpose. The difficulty arises in respect of requisition for (1) evicted persons, (2) supressed vacancy informants and (3) doctors and others who are doing essential social services. The term 'evicted person' is very vague. It implies that the person has been evicted by due process of law, that is, through Court. It is not understood how it is in the interests of the public that such persons should beaccommodated by requisitioning the premises of others. When a person is evicted by due process of law, the eviction will have to be considered as just and proper. The accommodation of such persons would not be in the general interests of the community as opposed to the particular interest of the individuals. The accommodation of evicted persons being prima facie in the interests of the individuals directly and vitially concerned, it cannot be considered as a public purpose. However it may be possiole to requisition premises for them by treating them as person without housing accommodation. The allotment in their case should be on that ground and not because they have been evicted. It is true that the object of allotting premises to the supressed vacancy informants is to encourage detection of under-hand dealings, but in determining whether the requisitioning is for a public purpose these considerations would be irrelevant. It is true that it was held in Secretary of State v. Gopal Iyer 59 Mad. Law Journal 274 that the provision of houses for poor people is a public purpose for it benefits a large calss of people and not one or two individuals and the purpose does not cease to be a public purpose even though a section of the public only is benefited. A supressed vacancy informant does not for a section of the people. A "class" or "section" means a definitely ascertainable body of individual not an indeterminate body or group having no clearly defined and non-------

variable characteristics or criteria by which they may be distinguished from any other body or group. The supressed vacancy informants are unascertainable body of indivuduals and consequently it appe rs th t the requisitioning of premises for such informants cannot be considered a public purpose. It should however be possible to give accommodation to many of ~~such~~ first informants provided they fall under any of the catagories mentioned above. Housing of persons enga ed in essential social services may constitute a public purpose but whether a person is engaged in the essential social service is a question of fact and unless such essential service is imposed on him by any stature or by an order of Government he cannot be compelled to do such service. Doctors may be doing some essential social service but no such duty is imposed on doctors who are privately practising medicine. There is nothing to prohibit them from refusing to do such essential social service. It appears therefore doubtful whether requisitioning of premises for accommodating doctors would be a public purpose.

6. The High Court in Appeal No.31 of 1951 has not only held that section 6 as amended r equires that any order made thereunder should state that the requisitioning is for a public purpose or for the purpose of the State, but further that the specific purpose for which the order s passed in each should also be mentioned in the Requisition Order. The requisition orders will have to be in confomity with their Lordships view in the above decision. The draft order as amended is appended herewith.

Sd/- B.D. Mirchandani
O.C.
Additional Secretary to Government.

L.R. to R.D. No. 426-Confl dated the 5th May 1951.

Mjr/26/7

4 Cs.

DRAFT

O R D E R

WHEREAS, on enquiry it is found that the premis.s specified below were vacant /had become vacant on/or after;

Now, therefore, in exercise of the powers conferred by caluse (a) of sub-section (4) of sectio 6 of the Bombay Land Requisition Act, 1948 (Bom. Act. XXXIII of 19.8) the Government of Bombay is pleased to requisition the following premises for the purposes of the State / for a public purpose, namely:- (specify t e specific purpose.....)

Desrciption of the premise.

By order of the Governor of Bombay.

Mjr/26/7
4 Cs.

Secretary to Government

Office of the R.L.A.

Bombay Land Requisiti n Act, 1948

Section 7 add ' B (2).

As the premises have been contxinued under requisition under section 7 of the Bombay Land Requisition Act, 1948 by Order No. BLRA/BLDC/3, dated the 16th February 1951, section 8B (2) of the Bombay Land Requisition Act, 1948, would be applicable to this case and rent can be recovered fron Shri Desai as arrears of land revenue. Action may however be stayed until the decision of the appeal filed by Covernment against the decision of Justice Tendolkar that the Bombay Land Requisition Act, 1948, is ultra vires.

Sd/- J.R.Dhurandhar
7/7

o.c.

Remembrancer of Legal Affairs.

U.R. to R.D. (Accom.), No 10782, dated the 9th July 1951.

Mjr/27/8

4 Cs.

Office of the R.L.A.

Bombay Land Requisition Act, 1948 Section 5.

It appears that on the advice of the R.L.A. in his opinion No. 7571, dated the 8th July 1949, the premises in questio.. were requisitioned by Government under section 5 of the Bombay Land Requisition Act on 14th July 1949 and were allotted to Dr. A.H. Pandya who was then engaged in some essential service for the Municipality. The requisition order does not specify the purpose for which the premises were requisitioned, nor does it mention the person for whom the premises were requisitioned, although a copy thereof was endorsed to Dr. Pandya. The papers underlying this requisition order no doubt indicate that these premises were requisitioned to accommodate Dr. Pandya when the landlord refused to let out those premises to him, though he had earlier promised so to do. In view of the decision of the Bombay High Court in Alreja's case following an earlier decision, the order would be held to be ex-facie bad. Moreover Dr. Pandya is now dead and the very purpose for which the premises were requisitioned, that is to say, the accommodation of a person doing essential service, has disappered. The Bombay Land Requisition Act, 1948, has been now amended. The requisition can now be made only for a State purpose or for a public purpose. The occupation of the premises by the widow of Dr. Pandya would not be either for a State purpose of for a public purpose. In the circumstances, it would be desirable to derequisition the premises.

Sd/ - J.R.Dhurandhar

O.C. 30/7

Remembrancer of Legal Affairs.

U.R. to R.D. (Accom,) No. 12152, dated the 30th July '51.

Mjr/27/7

4 Cs.

Legal Department.

Bombay Land Requisition Act, 1948

Section 6(5).

The view taken by R.D. (Accom). in its office note at pp 29-30 ante is correct. Admittedly Shri Khamkar was paying rent and consequently his occupation of the premises would be as a tenant; and on his vacating the premises the managing trustee of the S.K. Irani Trust should have given notice of the vacancy under section 6 (1) of the Bombay Land Requisition Act, 1948. Since he failed so to do, he can be prosecuted under section 6(5).

Sd/- B.D. Mirchandani

O.C.

Additional Secretary to Government.

U.R. to R.D. (Accom). No. 13350, dated the 21st August 1951.

Mjr/27/7

4Cs.

Office of the R.L.A.

It appears that Nur Sanitorium, Deolali, was requisitioned by the Collector of Nasik by Order No. IND-652 dated the 9th January 1948 under section 3 of the Bombay Land Requisition Ordinance, 1947, and 8 blocks and 1 bungalow in the Sanitorium were taken possession of by the Refugee Officer on 22nd January 19.8 and leased to displaced persons from Sind. They first agreed to pay rent at the rate of Rs. 932/- per month and also to bear the expenses on account of establishment charges as directed by the Collector in his LND. No 662 dated the 14th May 1948, In accordance with this agreement, the occupants executed individual agreements and the total amount of rent shown in each agreement was Rs. 932/- per month for the entire premises and establishment charges at the rate of Rs. 416/- per month. They, however,,subsequently represented to the Collector that the rent was very heavy and the establishment charges should also be decreased. After consulting the Executive Engineer, the rent was reduced to Rs. 648/- per month and the establishment charges to Rs. 284/- per month. Consequently, the occupants were not charged rent according to the terms of their respective agreements. However, the Trustees of the Nur Sanitorium appealed to the District Court and the District Court fixed the rent at Rs. 932/- per month and ordered that the actual establishment charges should be paid. The occupants are refusing to pay the enhanced rent and the actual establishment charges. Some of the refugees, it appears, have in the meantime vacated part of the premises and the Trustees are unwilling to take over the vacated part of the premises. The questions raised for the R.L.A's consideration are: (1) whether the allottees of the premises could original agreements executed- (2) whether part of the premises vacated by some of the allottees can be derequisitioned.

Even according to the agreements executed by the allottees they are liable to pay the rent of Rs. 932/- per month and the establishment charges as ultimately determined by the District Court. The rent and the establishment charges were reduced by the Collector on the representation of the allottees that the rent and the establishment charges were heavy. This reduction was by way of concession, even though they were liable under the agreements to pay the whole amount of rent i.e. Rs. 932/- and the full establishment charges. In view of the District Court's order enhancing the rent, the concession could no longer be extended to the allottees. Consequently, the allottees would be liable to pay the rent of Rs. 932Ø- per month and the actual establishment charges. If these allottees refuse to pay the rent and the establishment charges under the agreement executed by them, the arrears can be recovered as land revenue under section 8(B) of the Bombay Land Requisition Act and if necessary they can be evicted.

The Nur Sanitorium was requisitioned as one unit. Consequently, it appears it would not be lawful to derequisition part of the premises. The Collector may be asked to allot the vacated part of the premises to some other refugees; and if there are no such refugees, he may be asked to de-requisition the whole Sanitorium and immediately re-requisition part of the premises in occupation of the present allottees so that they may continue without any disturbance, and on so requisitioning the Collector may determine separately the compensation in respect of the requisitioned part of the premises and apportion the compensation between these allottees.

Sd/- J.R.Inamdar
14/8
O.C. Remembrancer of Legal Affairs.

U.R. to R.H.D., No. 13223, dated the 18th August 1951.

Mjr/26/7
4 Cs.

Legal Department.

It is presumed that the rent of Rs. 30 per month as compensation has been determined in the present case under section 8(1) of the Bombay Land Requisition Act, 1948, if so, the only remedy for the landlord was to appeal to the District Court within a period of sixty days from the date of decision (see section 6(3) of the Act). Since no such appeal has been made within the prescribed time, his remedy is barred. The threatened suit, if filed, would be defensible. No reply to the notice appears necessary.

Sd/- B.D. Mirchandani
O.C.
Additional Secretary to Government.

U.R. to A. & F.D. No 14758, dated the 17th September 1951.

Jr/27/7
4 Cs.